

SEVENTY-SIXTH DAY
(Thursday, May 23, 1985)

The Senate met at 10:30 o'clock a.m., pursuant to adjournment and was called to order by Senator Harris.

The roll was called and the following Senators were present: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Washington, Whitmire, Williams.

A quorum was announced present.

Senator Ted Lyon offered the invocation as follows:

Our Heavenly Father, bless the Members of this Senate, bless the staff, bless all the people that have worked so hard for so many days. Give us guidance in the last few days to do God's will and to protect and guide the people of this State in a way that You will be proud of. Amen.

On motion of Senator Mauzy and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

REPORTS OF STANDING COMMITTEES

Senator Brooks submitted the following report for the Committee on Health and Human Resources:

H.B. 1114

Senator Barrientos, Acting Chairman, submitted the following report for the Committee on Health and Human Resources:

H.B. 2005

H.B. 1703

H.C.R. 181

Senator Parmer, Acting Chairman, submitted the following report for the Committee on Health and Human Resources:

C.S.H.B. 1963

Senator Santiesteban submitted the following report for the Committee on Natural Resources:

S.B. 1480

H.B. 2470 (Amended)

C.S.S.B. 1494

C.S.H.B. 2433

H.B. 1717 (Amended)

H.B. 2290 (Amended)

H.B. 1803

H.B. 1802

H.B. 2459

H.B. 2454

H.B. 2453

H.B. 2452

H.B. 2451
H.B. 2450
H.B. 2449
H.B. 2207
H.B. 2068 (Amended)
H.B. 1702
H.B. 1306
H.B. 1148
H.C.R. 203
H.C.R. 173
H.C.R. 106
H.B. 1591
H.C.R. 40
C.S.H.B. 1867

Senator Farabee submitted the following report for the Committee on State Affairs:

H.B. 1874
H.B. 2076
S.B. 1488 (Amended)
H.B. 1252
H.B. 1206
H.B. 569
H.B. 743 (Amended)
H.B. 659
H.B. 2084
H.B. 2260
C.S.H.B. 2484
S.C.R. 166
H.B. 2496
H.B. 756
H.B. 1973
H.B. 1976

Senator Caperton submitted the following report for the Committee on Criminal Justice:

H.B. 1323 (Amended)
H.B. 824 (Amended)
H.B. 1365 (Amended)
H.B. 2053 (Amended)

Senator Traeger submitted the following report for the Committee on Intergovernmental Relations:

S.B. 600 (Again Reported)
S.B. 702 (Again Reported)

Senator Mauzy submitted the following report for the Committee on Jurisprudence:

C.S.H.B. 309
C.S.H.B. 1811

CO-SPONSORS OF HOUSE BILL 682

On motion of Senator Krier and by unanimous consent, Senators Brown, Howard, Leedom, Farmer, Sarpalius, Uribe and Williams will be shown as Co-sponsors of **H.B. 682**.

MESSAGE FROM THE HOUSE

House Chamber
May 23, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 2485, Amending the Act creating the Coastal Industrial Water Authority (the "Authority"); changing the name of the Authority to the "Coastal Water Authority"; conferring on the Authority the rights, powers, privileges...

H.B. 2497, Relating to the organization, boundaries, purposes, powers, duties, functions, authority, and financing of the Colden Road Utility District.

H.B. 2511, Relating to the creation, administration, powers, duties, operations, financing, and organization of the Mowad Water District.

H.B. 2513, Relating to the creation, administration, powers, duties, operation, and financing of the Harris County Municipal Utility District No. 318; and declaring an emergency.

H.B. 2514, Relating to the creation, administration, powers, duties, operation, and financing of the Harris County Municipal Utility District No. 319; and declaring an emergency.

H.B. 1120, Relating to the qualifications for loans made pursuant to the Texas Opportunity Plan; amending Section 52.32 of the Texas Education Code.

H.B. 1179, Relating to the validation of certain municipal annexations and other related governmental acts and proceedings.

H.B. 1594, Relating to payment for overtime work by fire fighters and police officers in certain cities.

H.B. 1655, Relating to the creation of an advisory commission to study the establishment of the 9-1-1 telephone number as the primary emergency telephone number in the State.

H.B. 1745, Relating to emergency orders for discharging waste or pollutants into or adjacent to water in this State and to notice required concerning the filing of an application for a permit, permit amendment, or permit renewal to...

H.B. 1879, Relating to the validation of certain municipal annexations and other related governmental acts and proceedings.

H.B. 2420, Relating to special license plates for persons who are honorary consuls.

H.B. 2478, Relating to the validation of notes and deeds of trust issued to finance municipal airport improvements.

H.B. 1732, Relating to the regulation and manufacture of certain foods, drugs, devices, and cosmetics.

H.B. 2512, Relating to the creation, administration, powers, duties, operation, and financing of the Harris County Municipal Utility District No. 317; and declaring an emergency.

H.J.R. 89, Proposing a constitutional amendment relating to the authority of the legislature to regulate the provision of health care by hospital districts.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 807**. House Conferees: Saunders, Chairman; Earley, Johnson, Jones, Eckels.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 1246**. House Conferees: Rudd, Chairman; Uher, Wolens, McWilliams, Harrison.

The House refused to concur in Senate amendments to **H.B. 2461** and requests the appointment of a Conference Committee to consider the differences between the two Houses. House Conferees: Willy, Chairman; J. Harris, S. Johnson, Gary Thompson, Kuempel.

H.B. 215, Relating to warning signs to be posted by alcoholic beverage retailers.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILLS AND RESOLUTION ON FIRST READING

The following bills and resolution received from the House were read the first time and referred to the Committee indicated:

- H.C.R. 161**, To Committee on Administration.
- H.B. 88**, To Committee on Jurisprudence.
- H.B. 634**, To Committee on Finance.
- H.B. 655**, To Committee on Jurisprudence.
- H.B. 13**, To Committee on Criminal Justice.
- H.B. 793**, To Committee on Education.
- H.B. 903**, To Committee on State Affairs.
- H.B. 986**, To Committee on Education.
- H.B. 1069**, To Committee on Finance.
- H.B. 1193**, To Committee on Jurisprudence.
- H.B. 1344**, To Committee on State Affairs.
- H.B. 1553**, To Committee on Economic Development.
- H.B. 1657**, To Committee on Intergovernmental Relations.
- H.B. 1739**, To Committee on Economic Development.
- H.B. 1744**, To Committee on Health and Human Resources.
- H.B. 1749**, To Committee on Natural Resources.
- H.B. 1908**, To Committee on Economic Development.
- H.B. 1968**, To Committee on Education.
- H.B. 2036**, To Committee on Education.
- H.B. 2096**, To Committee on State Affairs.
- H.B. 2272**, To Committee on Economic Development.
- H.B. 2414**, To Committee on Finance.
- H.B. 2479**, To Committee on Natural Resources.
- H.B. 2499**, To Committee on Natural Resources.
- H.B. 2517**, To Committee on Intergovernmental Relations.
- H.B. 2519**, To Committee on Natural Resources.
- H.B. 2522**, To Committee on Natural Resources.
- H.B. 2091**, To Committee on Health and Human Resources.
- H.B. 2375**, To Committee on Administration.

H.B. 1120, To Committee on Education.

H.B. 1732, To Committee on Health and Human Resources.

H.B. 2497, To Committee on Intergovernmental Relations.

SENATE BILL 544 WITH HOUSE AMENDMENT

Senator McFarland called **S.B. 544** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.
Floor Amendment No. 1 - Gavin

Amend **S.B. 544** as follows:

1. Page 1, line 12, add: "group health" before the word "coverage".
2. Page 1, line 17, add: "any individual H.M.O. policies", after the word policies".
3. Page 2, line 4, add: "providing group health coverage" after the word "organizations."
4. Page 2, line 22, add: "or any individual H.M.O. policies" after "sale".

The amendment was read.

Senator McFarland moved to concur in the House amendment.

The motion prevailed.

GUEST PRESENTED

Senator Blake was recognized and introduced the Capitol Physician for the Day, Dr. Robert P. Carroll, Jr., of Nacogdoches.

The Senate welcomed Dr. Carroll and expressed appreciation for his service.

HOUSE BILL 505 ON SECOND READING

Senator Truan asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 505, Relating to the right to a duty-free lunch period for certain public school teachers.

There was objection.

Senator Truan then moved to suspend the regular order of business and take up **H.B. 505** for consideration at this time.

The motion prevailed by the following vote: Yeas 19, Nays 3.

Yeas: Barrientos, Brooks, Brown, Edwards, Farabee, Kothmann, Krier, Lyon, McFarland, Mauzy, Parker, Parmer, Sarpalius, Sharp, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Blake, Harris, Sims.

Absent: Caperton, Glasgow, Henderson, Howard, Jones, Leedom, Montford, Santiesteban, Traeger.

The bill was read second time and was passed to third reading.

HOUSE BILL 505 ON THIRD READING

Senator Truan moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 505 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 19, Nays 4.

Yeas: Barrientos, Blake, Brooks, Brown, Edwards, Farabee, Kothmann, Krier, Lyon, McFarland, Mauzy, Parker, Parmer, Sarpalius, Sharp, Truan, Uribe, Whitmire, Williams.

Nays: Harris, Leedom, Sims, Washington.

Absent: Caperton, Glasgow, Henderson, Howard, Jones, Montford, Santiesteban, Traeger.

The bill was read third time and was passed.

RECORD OF VOTES

Senators Harris and Sims asked to be recorded as voting "Nay" on the final passage of the bill.

CONFERENCE COMMITTEE ON HOUSE BILL 433

Senator Mauzy called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 433 and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on H.B. 433 before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Mauzy, Chairman; Barrientos, Edwards, Williams, Uribe.

HOUSE BILL 1774 ON SECOND READING

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1774, Relating to the disclosure of bank charges.

The bill was read second time.

Senator Leedom offered the following committee amendment to the bill:

Amend H.B. 1774 by revising in SECTION 1, Sec. 3A(b) to read as follows:

"(b) The bank shall provide a written notice of the disclosures required by this section to each customer opening an account. The bank shall mail or deliver the notice to the customer, at the address shown for the customer in bank records, not later than the 10th day after the date the account is opened."

The committee amendment was read and was adopted.

On motion of Senator Leedom and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 1774 ON THIRD READING

Senator Leedom moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1774** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Washington.

Absent: Caperton, Jones, Santiesteban, Traeger.

The bill was read third time and was passed.

HOUSE BILL 1656 ON SECOND READING

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1656, Relating to prohibiting activities that interfere with the lawful hunting or catching of wildlife; providing a penalty.

The bill was read second time.

Senator Blake offered the following amendment to the bill:

Amend **H.B. 1656** by deleting Subsection (e) of Section 1 in its entirety and relettering succeeding subsections accordingly.

The amendment was read and was adopted.

On motion of Senator McFarland and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 1656 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1656** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Parker, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Krier, Mauzy, Parmer, Washington.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Parker, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Krier, Mauzy, Parmer.

HOUSE BILL 695 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 695, Relating to the filing requirements for issuance of certain life, health, and accident insurance policies, contracts, certificates, and forms and certain annuity contracts and forms.

The bill was read second time.

Senator Parmer offered the following amendment to the bill:

Amending **H.B. 695** by adding new SECTIONS 3, 4 and 5 to read as follows and renumbering current SECTION 3 as SECTION 6:

SECTION 3. Article 3.51-6, Insurance Code, is amended by adding Section 3B to read as follows:

Sec. 3B. CONTINUATION PRIVILEGE FOR CERTAIN DEPENDENTS.

(a) In this section, "health insurance policy" means a group policy or contract, including group contracts issued by companies subject to Chapter 20 of this code and the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), providing insurance for hospital, surgical, or medical expenses incurred as a result of an accident or sickness.

(b) Each health insurance policy delivered, issued for delivery, renewed, amended or extended in this state shall include an option for each person covered by the policy by virtue of family or dependent relationship to a person who is a member of the group for which the health insurance policy is provided to continue coverage with the group if:

(1) previous eligibility for coverage under the health insurance policy ceases because of the severance of the family relationship or the retirement or death of the member of the group; and

(2) The family member or dependent has been a member of the group for a period of at least one year or is an infant under one year of age.

(c) A person who exercises the option provided by Subsection (b) of this section may not be required to take and pass a physical examination as a condition for continuing coverage.

(d) If a person exercises the option provided by Subsection (b) of this section, that person is entitled to coverage that is identical in scope to the coverage provided under the health insurance policy, and exclusions that were not included in the health insurance policy may not be included in the group continuation coverage. However, if the group policyholder replaces the health insurance policy within the two-year period provided by Subsection (1)(4) of this section, the person may obtain coverage identical in scope to the coverage under the replacement group policy as provided by this article.

(e) A person covered under group continuation coverage shall pay premiums for the coverage directly to the group policyholder, and the coverage shall provide the person with the option of paying the premiums in monthly installments. The group policyholder may require the person to pay a fee of not more than \$5 a month for administrative costs.

(f) Except as provided in subsection (m) of this section, a premium for continuation of the spouse or dependent on the group policy shall be no more than the premium charged under the group contract for the spouse or dependent had the family relationship not been severed.

(g) Except as provided in subsection (m) of this section, at the time the health insurance policy is issued, the group policyholder shall give written notice to each

member of the group and each dependent of a member of the group covered by a health insurance policy of the continuation option.

(h) Except as provided in subsection (m) of this section, each health insurance policy shall require a member of the group to give written notice to group policyholder within 15 days of any severance of the family relationship that might activate the continuation option under Subsection (b) of this section, and the group policyholder on receiving this notice shall immediately give written notice to each affected dependent of the continuation option. On receipt of notice of the death or retirement of a group member, the group policyholder shall immediately give written notice to the group member's dependents of the continuation option under Subsection (b) of this section. Such notice shall include a statement of the amount of the premium to be charged, and shall be accompanied by any necessary enrollment forms.

(i) Within 45 days from the severance of the family relationship or the retirement or death of the member of the group, the dependent must give written notice to the group policyholder of the desire to exercise the option under Subsection (b) of this section or the option expires. Coverage under the health insurance policy remains in effect during this 45 day period provided the policy premiums are paid.

(j) Any period of previous coverage under the health insurance policy is to be used in full or partial satisfaction of any required probationary or waiting periods provided in the contract for dependent coverage.

(k) If a health insurance policy provides to a group member continuation rights to cover the period between the time that the member retires and the time of eligibility for coverage by Medicare, those same continuation rights shall be made available to the group member's dependents.

(l) If a person exercises the continuation option under Subsection (b) of this section, coverage of that person continues without interruption and may not be cancelled or otherwise terminated until:

(1) the insured fails to make a premium payment in the time required to make that payment;

(2) the insured establishes residence outside the state;

(3) the insured becomes eligible for substantially similar coverage under another health insurance policy, hospital or medical service subscriber contract, medical practice or other prepayment plan or by any other plan or program; or

(4) a period of two years has elapsed since the severance of the family relationship or the retirement or death of the member of the group.

(m) Contracts executed pursuant to the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) shall provide that:

(1) Premium payments must be remitted directly to the Employees Retirement System of Texas and must be postmarked or received not later than the 10th day of the month for which the premium is due.

(2) The premium for this group continuation coverage may not exceed the level established for other surviving dependents of deceased employees or retirees.

(3) At the time the health insurance policy is delivered, issued for delivery, renewed, amended or extended on or after January 1, 1986, the Employees Retirement System of Texas shall give notice of the continuation option to each commission, agency, and institution covered by the program. The commissions, agencies, and institutions shall give written notice of the continuation option to each of their employees and each dependent of those employees who are covered by the health insurance program.

(4) Each member of the group shall give written notice to the employing agency within 15 days of any severance of family relationship that might activate

the continuation option under subsection (b) of this section. Upon receipt of such notice or upon the death of an employee, the employing agency shall give written notice to each affected dependent of the continuation option, which shall include a statement of the amount of the premium to be charged. Notice under this paragraph will be accompanied by any necessary enrollment forms.

(5) The covered dependent must exercise this continuation option within 45 days from the severance of the family relationship or the retirement or death of the member and must provide written notification to the employing agency within 45 days. Coverage under the health insurance policy remains in effect during this 45 day period provided the policy premiums are paid.

(6) Any period of previous coverage under the health insurance policy is to be used in full or partial satisfaction of any required probationary or waiting periods provided in the contract for dependent coverage.

SECTION 4. (a) In addition to the notice required by Subsection (g), Section 3B, Article 3.51-6, Insurance Code, as added by this Act, an insurer shall give the same written notice to each member of a group and each dependent insured under health insurance policy delivered or issued for delivery before the effective date of this act on the first renewal of that policy on or after January 1, 1986.

(b) Section 3B, Article 3.51-6, Insurance Code, as added by this Act, applies only to the health insurance policies defined in that section that are delivered, issued for delivery, renewed, amended, or extended after January 1, 1986. Health insurance policies delivered or issued for delivery before that date are governed by the law as it existed before the adoption of this Act until those policies are renewed on or after January 1, 1986, and that law is continued in effect for that purpose.

SECTION 5. Article 20A.26, Insurance Code, is amended by adding a new subsection (i) to Section 4, to read as follows:

(i) Any health maintenance organization authorized under this Act shall be subject to Article 3.51-6, Section 3B, Insurance Code.

The amendment was read.

POINT OF ORDER SUSTAINED

Senator Glasgow raised a Point of Order that the amendment was not germane to the bill.

The Presiding Officer (Senator Harris in Chair) sustained the Point of Order.

The bill was passed to third reading.

RECORD OF VOTE

Senator Mauzy asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 695 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 695 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Mauzy, Washington.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Mauzy.

(President in Chair)

MESSAGE FROM THE HOUSE

House Chamber
May 23, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 131, Granting Josephine Faz and Medea Faz permission to sue the Austin Independent School District.

S.C.R. 135, Granting Clifton Construction-Engineering, Inc. permission to sue the State.

S.C.R. 143, Granting D. Dave Bentrup and Verla A. Bentrup permission to sue the State of Texas and the Texas Alcoholic Beverage Commission.

S.C.R. 144, Granting Commercial Contracting Company of San Antonio, Inc., permission to sue the State.

S.C.R. 147, Granting Borsberry Construction Company, Inc. permission to sue the State.

S.C.R. 151, Granting Empire Generator Corporation permission to sue the State.

S.C.R. 152, Granting H. B. Zachry Company permission to sue the State of Texas and the State Department of Highways and Public Transportation.

S.C.R. 153, Granting H. B. Zachry Company permission to sue the Tarrant County Water Control and Improvement District No. 1 of Tarrant County.

S.C.R. 155, Granting Bay, Inc. permission to sue the State of Texas, the State Highway and Public Transportation Commission, and the State Department of Highways and Public Transportation.

S.C.R. 156, Granting Herzog Contracting Corp. permission to sue the State of Texas, the State Highway and Public Transportation Commission, and the State Department of Highways and Public Transportation.

H.C.R. 198, Granting Charles White permission to sue the State.

H.C.R. 228, Granting Korba, Helfert, and Zabel, Inc. permission to sue the State.

H.C.R. 229, Granting J. D. Abrams, Inc. permission to sue the State.

H.C.R. 235, Granting Black Gold Express permission to sue the State.

H.C.R. 237, Granting Vincent Paul Rydzak permission to sue the State.

H.C.R. 227, Granting Eugene T. McLaughlin and Cara Houchins Hughes permission to sue the State.

H.C.R. 239, Granting Samuel Hudson permission to sue the State.

H.C.R. 241, Granting John Monahan and the University Employees Union permission to sue the State of Texas and The University of Texas System.

H.C.R. 226, Granting Systems Marketing and Education, Inc. permission to sue the State.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 1378 ON SECOND READING

On motion of Senator Krier and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1378, Relating to the imposition of certain conditions of bail, probation, mandatory supervision, and parole for defendants charged with or convicted of certain offenses with children as victims.

The bill was read second time.

Senator Krier offered the following amendment to the bill:

Amend **H.B. 1378** as follows:

(1) On page 1, strike lines 34-36 and substitute the following:

(d) To the extent that a condition imposed under this article conflicts with an existing court order granting possession of or access to a child, the condition imposed under this article prevails for a period specified by the magistrate, not to exceed 90 days.

(2) On page 2, strike lines 41-43 and substitute the following:

supervised access to the victim. To the extent that a condition imposed under this subsection conflicts with an existing court order granting possession of or access to a child, the condition imposed under this subsection prevails for a period specified by the court granting probation, not to exceed 90 days.

(3) On page 3, strike lines 2-4 and substitute the following:

supervised access to the victim. To the extent that a condition imposed under this subdivision conflicts with an existing court order granting possession of or access to a child, the condition imposed under this subdivision prevails for a period specified by the Board, not to exceed 90 days.

(4) On page 4, strike lines 2-4 and substitute the following:

supervised access to the victim. To the extent that a condition imposed under this subsection conflicts with an existing court order granting possession of or access to a child, the condition imposed under this subsection prevails for a period specified by the court granting probation, not to exceed 90 days.

The amendment was read and was adopted.

On motion of Senator Krier and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 1378 ON THIRD READING

Senator Krier moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1378** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed.

MESSAGE FROM THE HOUSE

House Chamber

May 23, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.J.R. 27, Proposing a constitutional amendment to abolish the office of county treasurer in Andrews County. (With amendments)

S.J.R. 14, Proposing a constitutional amendment to create the Judicial Districts Board and to provide for the reapportionment of judicial districts by that board or by the Legislative Redistricting Board. (With amendment)

S.B. 784, Relating to the imposition and rate of local sales and use taxes by certain cities for reduction of property taxes. (With amendment)

S.B. 608, Relating to the levy and collection of assessments on property by certain counties to finance highway improvements. (With amendment)

S.B. 289, Relating to denial, revocation, or suspension of a registration as a securities dealer, agent, or salesman and to the probation or reprimand of such a person.

S.B. 334, Relating to employment and compensation of a mental health administrator for the Probate Court No. 3 of Harris County.

S.B. 821, Relating to the authority of school trustees to serve for the remainder of their terms in a transition to election of trustees from single-member districts.

S.B. 125, Relating to the exemption from identification requirements of State-owned vehicles of the attorney general's office and The Banking Department of Texas. (With amendment)

S.B. 48, Relating to the authority of the Texas Department of Human Resources to obtain criminal history information records from the Department of Public Safety, the F.B.I., or another law enforcement agency. (With amendment)

S.B. 1427, Relating to authority to establish a foreign trade zone in Weslaco.

H.B. 2091, Relating to the continuation, composition, powers, and duties of the Texas Department of Health and the Texas Board of Health; to the continuation of the Occupational Safety Board; to contracts with...

H.B. 2375, Relating to the purchase and management of telecommunications and automated information items for State government.

S.B. 455, Relating to procedures and practices in suits affecting the parent-child relationship and to the repeal and redesignation of certain provisions related to suits for the support, conservatorship, or access to a child. (With amendment)

S.B. 72, Relating to the creation of offenses involving computers. (With amendment)

S.B. 119, Relating to consent to medical treatment for certain minors.

S.B. 1002, Relating to the powers, duties, and funding of certain State agencies and local governmental entities that perform functions relating to the commemoration of the Texas sesquicentennial. (With amendment)

S.B. 221, Relating to the transfer of certain property to, and the registration of certain vehicles of, the Civil Air Patrol, Texas Wing.

S.B. 639, Relating to the Texas Controlled Substances Act and to the addition to and reclassification of certain substances in schedules and penalty groups; proceedings related to the denial, revocation, or suspension of... (With amendment)

S.B. 523, Relating to the authority of the governing board of the Texas School for the Deaf to obtain criminal history information records from the Department of Public Safety, the F.B.I. identification division.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

MOTION TO PLACE HOUSE BILL 1543 ON SECOND READING

Senator Howard moved to suspend the regular order of business to take up for consideration at this time:

H.B. 1543, Relating to the assignment and transfer of students to schools within a school district.

Question - Shall the regular order be suspended?

SENATE RESOLUTION 505

Senator Montford offered the following resolution:

WHEREAS, In a recent newspaper article, James A. Michener wrote about the far-reaching importance of a liberal arts education, stressing that our society must build its foundation "on the men and women trained to think, on people conversant with the great sweep of history, and on mature persons who have weighed and judged values"; and

WHEREAS, Mr. Michener, a noted historian and author, is such a man, and Texans can be proud that he has chosen this state as the subject of his next book; and

WHEREAS, Born in 1907 and growing up in a small town in Pennsylvania, he faced an early life of poverty and upheaval; as a boy, he frequently left home, hitching rides to see America, but he never lost sight of the value of education; and

WHEREAS, He graduated summa cum laude from Swarthmore College in 1929 but continued his studies at Harvard and universities in Colorado, Pennsylvania, Virginia, Ohio, Scotland, Italy, and London; and

WHEREAS, Between 1936 and 1949, he was a university professor in Colorado and at Harvard, a textbook editor for Macmillan Publishing Company, and a serviceman who was stationed in the South Pacific; and

WHEREAS, A talented listener as well as writer, he wrote Tales of the South Pacific from the stories he heard while in the jungles of Espiritu Santo, and in 1948 he was awarded the Pulitzer Prize in fiction for the collection; and

WHEREAS, With Tales of the South Pacific, Mr. Michener began a prolific and highly successful writing career that has taken him throughout the world for extensive research and that has seen the publication of more than 30 books that have sold 60 million copies and have been translated into 52 languages; and

WHEREAS, His interests range from the wonders of space travel to the mysteries of prehistory, and he had begun books on the Middle East, Afghanistan, South Africa, and Poland before the rest of the world became aware of the impending crises in those areas; and

WHEREAS, During the past three years, this preeminent writer has been working on a book about Texas, choosing this state because he sees it as pivotal to the nation's future and because of a sincere fascination with its bicultural aspects, its heroic historical figures, and its oil, ranching, and cotton industries, each of which is surrounded by its own mystique; and

WHEREAS, As a result of his recent extensive research about the state, he has agreed to serve as an advisory editor for the proposed revision of The Handbook of Texas; and

WHEREAS, He holds the Jack G. Taylor professorship at The University of Texas at Austin, a position that continues his rewarding association with the university; Mr. Michener and his wife, Mari, gave the school an impressive collection of 20th century American art, and these paintings form the nucleus of the highly regarded permanent collection of the Huntington Art Gallery; and

WHEREAS, James Michener is a man of formidable knowledge and intellect, he is an optimistic patriot who conveys an old-fashioned enthusiasm for this country and our ideals of democracy, and he is a man whose knowledge of history and commitment to education make him a praiseworthy example for all citizens; the publication of his book on Texas during the year of the Sesquicentennial is a truly great honor for this state; now, therefore, be it

RESOLVED, That the Senate of the 69th Legislature of the State of Texas hereby honor James A. Michener and officially welcome him to the Texas Senate and the State Capitol; and, be it further

RESOLVED, That an official copy of this resolution be prepared for Mr. Michener as an expression of highest esteem from the members of the Senate of the State of Texas.

MONTFORD
BARRIENTOS

The resolution was read and was adopted.

On motion of Senator Barrientos and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

GUEST PRESENTED

The President presented Mr. Michener to the Senate.

Mr. Michener addressed the Senate.

SENATE RULE 103 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Health and Human Resources might consider the following bills today:

H.B. 1744
H.B. 2174
H.B. 1732
H.B. 2091

SENATE RULE 103 SUSPENDED

On motion of Senator Traeger and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Intergovernmental Relations might consider the following bills today:

H.B. 2497

H.B. 1240

H.B. 490

There was objection to the posting rule being suspended to hear **H.B. 2517**.

SENATE RULE 103 SUSPENDED

On motion of Senator Farabee and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on State Affairs might consider the following bills today:

H.B. 2438

H.C.R. 141

SENATE RULE 103 SUSPENDED

On motion of Senator Blake and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Administration might consider the following bills today:

S.R. 483

S.R. 455

H.C.R. 78

H.B. 2375

SENATE RULE 103 SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Criminal Justice might consider **H.B. 1055** today.

SENATE RULE 103 SUSPENDED

On motion of Senator Howard and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Finance might consider **S.B. 1495** today.

SENATE RULE 103 SUSPENDED

On motion of Senator Parker and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Education might consider the following bills today.

S.B. 1050

S.R. 481

H.B. 501

H.B. 986

H.B. 1120

H.B. 1968

**MOTION TO PLACE HOUSE BILL 1543 ON
SECOND READING**

The Senate resumed consideration of **H.B. 1543** with a motion by Senator Howard to suspend the regular order.

Question - Shall the regular order be suspended?

The motion to suspend the regular order was lost by the following vote: Yeas 16, Nays 11. (Not receiving two-thirds vote of the Members present)

Yeas: Barrientos, Blake, Brown, Caperton, Edwards, Harris, Henderson, Howard, Lyon, McFarland, Montford, Santiesteban, Sharp, Sims, Traeger, Williams.

Nays: Farabee, Glasgow, Kothmann, Krier, Leedom, Mauzy, Parmer, Sarpalius, Truan, Uribe, Washington.

Absent: Brooks, Jones, Parker, Whitmire.

CONFERENCE COMMITTEE REPORT SENATE BILL 37

Senator Brown submitted the following Conference Committee Report:

Austin, Texas
May 23, 1985

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 37 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BROWN
CAPERTON
McFARLAND
GLASGOW
MONTFORD

On the part of the Senate

A. SMITH
T. SMITH
WALDROP
KELLER
MORALES

On the part of the House

A BILL TO BE ENTITLED AN ACT

relating to jury instructions on parole and good conduct time credit.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 37.07, Code of Criminal Procedure, 1965, is amended by adding Section 4 to read as follows:

Sec. 4. (a) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense of which the jury has found the defendant guilty is listed in Section 3f(a)(1), Article 42.12, of this code or if the judgment contains an affirmative finding under Section 3f(a)(2), Article 42.12, of this code, unless the defendant has been convicted of a capital felony the court shall charge the jury in writing as follows:

"Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the sentence imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

"It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

"Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served equals one-third of the sentence imposed or 20 years, whichever is less, without consideration of any good conduct time he may earn. If the defendant is sentenced to a term of less than six years, he must serve at least two years before he is eligible for parole. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

"You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant."

(b) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense is punishable as a felony of the first degree, if prior convictions have been alleged for enhancement of punishment as provided by Section 12.42(b), (c), or (d), Penal Code, or if the offense is a felony not designated as a capital felony or a felony of the first, second, or third degree and the maximum term of imprisonment that may be imposed for the offense is longer than sixty years, unless the offense of which the jury has found the defendant guilty is listed in Section 3f(a)(1), Article 42.12, of this code or the judgment contains an affirmative finding under Section 3f(a)(2), Article 42.12, of this code, the court shall charge the jury in writing as follows:

"Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off of the sentence imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

"It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

"Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served plus any good conduct time earned equals one-third of the sentence imposed or 20 years, whichever is less. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

"You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant."

(c) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense is punishable as a felony of the second or third degree, if a prior conviction has been alleged for enhancement as provided by Section 12.42(a), Penal Code, or if the offense is a felony not designated as a capital felony or a felony of the first, second, or third degree and the maximum term of imprisonment that may be imposed for the offense is 60 years or less unless the offense of which the jury has found the defendant guilty is listed in Section 3f(a)(1), Article 42.12, of this code or the judgment contains an affirmative finding under Section 3f(a)(2), Article 42.12, of this code, the court shall charge the jury in writing as follows:

“Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the sentence imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

“It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

“Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served plus any good conduct time earned equals one-third of the sentence imposed. Eligibility for parole does not guarantee that parole will be granted.

“It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

“You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant.”

(d) This section does not permit the introduction of evidence on the operation of parole and good conduct time laws.

SECTION 2. This Act takes effect September 1, 1985.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE BILL 440 WITH HOUSE AMENDMENTS

Senator Traeger called S.B. 440 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Pierce

Substitute the following for S.B. 440:

A BILL TO BE ENTITLED AN ACT

relating to the governance, territory, and powers of a metropolitan rapid transit authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (l) and (q), Section 6, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), are amended to read as follows:

(l) The authority may make contracts, leases and agreements with, and accept grants and loans from, the United States of America, its departments and agencies, the State of Texas, its agencies, counties, municipalities and political subdivisions, [and] public or private corporations, including a nonprofit corporation created under a resolution of the board, and other persons, and may generally perform all acts necessary for the full exercise of the powers vested in it. The authority may acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement. Any

revenue bond indenture may provide limitations upon the exercise of the powers stated in this section and such limitations shall apply so long as any of the revenue bonds issued pursuant to such indenture are outstanding and unpaid.

(q) The authority may contract with any city, county, or other political subdivision for the authority to provide public transportation services to any area outside the boundaries of the authority on such terms and conditions as may be agreed to by the parties. Nothing in this subsection or in Subsection (i) or (l) of this section pertaining to powers of the authority creates or confers any governmental immunity or limitation of liability on any entity or person other than the authority.

SECTION 2. Subsection (b), Section 6A, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The governing body of any incorporated city or town located in whole or in part within either a county in which any portion of the authority territory is situated or a county adjacent to a county in which any portion of the authority territory is situated may hold an election on the question of whether the city or town shall be annexed to the authority. If a majority of the qualified voters in the city or town votes for annexation, the governing body shall certify the results of the election to the board of the authority, and the city or town shall become a part of the authority, except as provided in Subsection (f) of this section.

SECTION 3. Subsections (c) and (e), Section 6B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) If 75 percent or more of the population of the county described in Subsection (a) of this section outside the corporate limits of the principal city resides within the limits of the authority, the board consists of 11 members, including the original five members or their successors, two additional members appointed jointly by the mayors of all incorporated municipalities except the principal city located within the authority, three other additional members appointed by the commissioners court of the county, and one member, who serves as chairman, who is appointed by a majority of the board. If a member of the board is appointed under this subsection to serve as chairman, the member is considered to have vacated the member's other position on the board, and a successor shall be appointed as provided by Subsection (f) of this section. A person appointed under this subsection may serve two consecutive terms as chairman, in addition to any service the person served on the board before the person's appointment as chairman [the other ten members].

(e) The terms of office of any members of the board appointed after the confirmation and tax election and after the effective date of this Act are four years, except that in order to provide staggered terms, the terms of office of one-half of the first members appointed by an appointing agency after the effective date of this Act, if an even number is to be appointed by an agency, and a bare majority of the first members appointed by the agency, if an odd number greater than one is to be appointed by an agency, are two years. In addition, the appointing agency may shorten the initial terms to make the expiration dates coincide with those of the previously existing positions. To be eligible for appointment to the board, a person must be a qualified voter residing within the boundaries of the authority. Except as provided by Subsection (c) of this section, a person [No member of the board] may not serve more than two consecutive four-year terms as a member of the board.

SECTION 4. Subsection (a), Section 14, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Contracts for more than \$10,000 [~~\$5,000~~] for the construction of improvements or the purchase of material, machinery, equipment supplies and all

other property except real property, shall be let on competitive bids after notice published once a week for two consecutive weeks, the first publication to be at least 15 days before the date fixed for receiving bids, in a newspaper of general circulation in the area in which the authority is located. The board may adopt rules governing the taking of bids and the awarding of such contracts and providing for the waiver of this requirement in the event of emergency, in the event the needed materials are available from only one source, in the event that, except for construction of improvements on real property, in a procurement requiring design by the supplier competitive bidding would not be appropriate and competitive negotiation, with proposals solicited from an adequate number of qualified sources, would permit reasonable competition consistent with the nature and requirements of the procurement, or in the event that, except for construction of improvements on real property, after solicitation it is ascertained that there will be only one bidder. This subsection does not apply to personal and professional services or to the acquisition of existing transit systems.

SECTION 5. The change made by this Act in Subsection (a), Section 14, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), applies to contracts made on or after the effective date of this Act. A contract made before that date is subject to the law in effect when the contract was made, and the former law is continued in effect for that purpose.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Committee Amendment No. 2

Amend S.B. 440 as follows:

(h) Notwithstanding anything to the contrary in this section, if the population of the county described in subsection (a) of this section is not less than 450,000 and not greater than 600,000, according to the 1980 Federal census, the board of the authority shall consist of the mayor of the principal city, the county judge, all members of the governing body of the principal city, and the mayor of another incorporated city in the county, selected by the board.

The amendments were read.

Senator Traeger moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 440 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Traeger, Chairman; Kothmann, Krier, Sharp and Sims.

NOMINEE CONFIRMED

On motion of Senator Howard and by unanimous consent, all necessary rules were suspended in order to consider the nomination of Dr. Joe Pentony, to be a Member of the Advisory Council for Technical-Vocational Education.

On Senator Howard's motion, Dr. Pentony was confirmed by the following vote: Yeas 30, Nays 0.

Absent: Jones.

SENATE BILL 1423 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1423, Relating to supplemental appropriations to the Texas State Board of Public Accountancy.

The bill was read second time and was passed to engrossment.

SENATE BILL 1423 ON THIRD READING

Senator Harris moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1423** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent: Jones.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent: Jones.

COMMITTEE SUBSTITUTE SENATE BILL 961 ON SECOND READING

On motion of Senator Uribe and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 961, Relating to insurance coverage for the services of certain health care practitioners.

The bill was read second time and was passed to engrossment.

RECORD OF VOTES

Senators Sharp and Mauzy asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 961 ON THIRD READING

Senator Uribe moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 961** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 3.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Kothmann, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Mauzy, Sharp, Washington.

Absent: Jones.

The bill was read third time and was passed.

RECORD OF VOTES

Senators Sharp and Mauzy asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 478 ON THIRD READING

Senator Mauzy moved to suspend the regular order of business to take up for third reading and final passage:

H.B. 478, Relating to employment and compensation of court coordinators, administrative assistants, and auditors for statutory probate courts.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Jones.

The bill was read third time.

Senator Brooks offered the following amendment to the bill:

Amend **H.B. 478** by inserting "in a county with a population of 500,000 or more according to the most recent federal census" after "A judge of a statutory probate court" in the first sentence of Section 1 of Article 1970a-2, Revised Statutes, as added by the bill.

The amendment was read and was adopted by unanimous consent.

On motion of Senator Mauzy and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed.

COMMITTEE SUBSTITUTE HOUSE BILL 44 ON SECOND READING

On motion of Senator Lyon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 44, Relating to the time at which a defendant whose conviction is reversed by a court of appeals is entitled to bail pending determination of a petition for discretionary review.

The bill was read second time and was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 44 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 44** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Montford, Washington.

Absent: Jones.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1.

Nays: Montford.

Absent: Jones.

SENATE RULE 103 SUSPENDED

On motion of Senator Blake and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Finance might consider **H.B. 2414** today.

SENATE CAUCUS

On motion of Senator Mauzy, the Senate agreed to meet in Caucus upon recess today.

RECESS

On motion of Senator Mauzy, the Senate at 12:00 o'clock p.m. took recess until 1:30 o'clock p.m. today.

AFTER RECESS

The Senate met at 1:30 o'clock p.m. and was called to order by Senator Caperton.

SENATE RESOLUTIONS ON FIRST READING

On motion of Senator Caperton and by unanimous consent, the following resolutions were introduced, read first time and referred to the Committee indicated:

S.C.R. 179 by Caperton Administration
Directing State Preservation Board to erect in an appropriate place a monument honoring Texans who participated in defense of Pearl Harbor.

S.C.R. 180 by Brooks, Brown, Parker, Administration
Sharp, Truan and Uribe
Establishing Joint Interim Committee on Coastline Rehabilitation.

S.C.R. 181 by Jones Finance
Establishing Joint Special Committee on Insurance Tax Laws.

S.C.R. 182 by Brooks Administration
Directing Senate Committee on Health and Human Resources and House Committee on Human Services to conduct legislative review of Vendor Drug Program.

HOUSE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions received from the House were read the first time and referred to the Committee indicated:

H.C.R. 198, To Committee on Jurisprudence.
H.C.R. 228, To Committee on Jurisprudence.
H.C.R. 229, To Committee on Jurisprudence.
H.C.R. 235, To Committee on Jurisprudence.
H.C.R. 237, To Committee on Jurisprudence.
H.C.R. 227, To Committee on Jurisprudence.
H.C.R. 239, To Committee on Jurisprudence.
H.C.R. 241, To Committee on Jurisprudence.
H.C.R. 226, To Committee on Jurisprudence.
H.J.R. 89, To Committee on Health and Human Resources.
H.B. 215, To Committee on State Affairs.
H.B. 1179, To Committee on Intergovernmental Relations.
H.B. 1594, To Committee on Intergovernmental Relations.
H.B. 1655, To Committee on State Affairs.

H.B. 1745, To Committee on Natural Resources.
H.B. 1879, To Committee on Intergovernmental Relations.
H.B. 2420, To Committee on State Affairs.
H.B. 2478, To Committee on Intergovernmental Relations.
H.B. 2485, To Committee on Natural Resources.
H.B. 2511, To Committee on Natural Resources.
H.B. 2512, To Committee on Natural Resources.
H.B. 2513, To Committee on Natural Resources.
H.B. 2514, To Committee on Natural Resources.

MESSAGE FROM THE HOUSE

House Chamber
May 23, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 290, Relating to a reapportionment of the judicial districts of the State by the Judicial Districts Board or the Legislative Redistricting Board, the transfer of cases upon reapportionment, the jurisdiction and terms of... (With amendment)

S.B. 212, Relating to the governing board, operations, and continuation of the Texas Department on Aging. (As substituted)

S.B. 497, Relating to establishment, funding, and uses of the Texas Savings and Loan Supplemental Fund and to the creation, membership, administration, powers and duties, and dissolution of the Texas Savings & Loan Fund Corporations. (With amendment)

S.B. 1295, Relating to the operation, funding, and lease of the Harris County Psychiatric Center and the operation of a commitment center; and declaring an emergency. (With amendment)

The House has concurred in Senate amendments to the following House bills by a non-record vote:

H.B. 235
H.B. 2390
H.B. 1618
H.B. 2329
H.B. 2211
H.B. 2077
H.B. 690
H.B. 2177

The House has adopted the Conference Committee Report on S.B. 371 by a non-record vote.

Respectfully,
BETTY MURRAY, Chief Clerk
House of Representatives

SENATE RULE 74a SUSPENDED

On motion of Senator Lyon and by unanimous consent, Senate Rule 74a was suspended as it relates to the House amendment to S.B. 48.

SENATE BILL 48 WITH HOUSE AMENDMENT

Senator Lyon called S.B. 48 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.
Committee Amendment No. 1 - McKinney

Amend S.B. 48 as follows:

- (1) On page 2, line 3, strike "or".
- (2) On page 2, line 6, strike ":" and substitute "; or".
- (3) On page 2, between lines 6 and 7, insert the following:

"(6) a volunteer or person applying as a volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America."

The amendment was read.

Senator Lyon moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 1388 WITH HOUSE AMENDMENT

Senator Sharp called S.B. 1388 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.
Committee Amendment No. 1 - Pierce
Substitute the following for S.B. 1388:

**A BILL TO BE ENTITLED
AN ACT**

relating to the licensing and regulation of and the placement of motor vehicles in motor vehicle storage facilities; providing for fees and their use; giving certain rights to owners of vehicles, as defined in the Act; imposing certain responsibility on the Texas Department of Labor and Standards; adding Articles 6687-9a and 6701g-3 to Title 116, Revised Statutes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 116, Revised Statutes, is amended by adding Article 6687-9a to read as follows:

"Article 6687-9a. VEHICLE STORAGE FACILITY ACT

"Section 1. SHORT TITLE. This article may be cited as the Vehicle Storage Facility Act.

"Section 2. DEFINITIONS. In this article:

"(1) 'Department' means the Texas Department of Labor and Standards.

"(2) 'Vehicle storage facility' means a garage, parking lot, or any type of facility owned by a person other than a governmental entity for storing or parking ten or more vehicles.

"(3) 'Vehicle' means a motor vehicle subject to registration under the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes) or any other device designed to be self-propelled or transported on a public highway.

"(4) 'Owner of a vehicle' means:

"(A) a person in whose name the vehicle is registered under the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes);

"(B) a person in whose name the vehicle is registered under Section 2, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article

6675a-2, Vernon's Texas Civil Statutes), or a member of the person's immediate family;

"(C) a person who holds the vehicle through a valid lease agreement; or

"(D) an unrecorded lienholder whose right to possess the vehicle exists through a chattel mortgage.

"Section 3. EXCEPTION. This article does not apply to a vehicle parked or stored at a vehicle storage facility with the consent of the vehicle's owner. This article does not apply to a vehicle storage facility operated by a person licensed pursuant to the Texas Motor Vehicle Commission Code.

"Section 4. AUTHORITY. (a) The department is authorized to issue licenses to operate vehicle storage facilities.

"(b) The department shall adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities to ensure that licensed storage facilities maintain adequate standards for the care of stored vehicles.

"Section 5. PROHIBITION. A person may not operate a vehicle storage facility unless the person holds a current license to operate a vehicle storage facility issued to the person by the department.

"Section 6. APPLICATION. (a) The department by rule shall determine the types of information to be supplied on an application for a license under this article, but the rules must require that an application be made under oath and list:

"(1) each conviction of a felony, or a misdemeanor for which the maximum punishment is by confinement in jail or by a fine exceeding \$200, that was obtained against the applicant or a partner or officer of the applicant in the three years immediately preceding the date of the application;

"(2) the name and address of each partner, if the applicant is a partnership; and

"(3) the name and address of the president, secretary, and treasurer of the corporation, if the applicant is a corporation.

"(b) The application of a corporation must be signed and sworn to by the president and secretary of the corporation.

"(c) An application under this section must be accompanied by a nonrefundable fee of \$100.

"Section 7. APPROVAL. The department shall approve an application that is submitted as provided by Section 6 of this article for a license to operate a vehicle storage facility unless the commission determines that:

"(1) the applicant knowingly supplied false or incomplete information on the application;

"(2) the applicant, one of the applicant's partners, or one of the applicant's officers has been convicted of a felony, or a misdemeanor for which the maximum punishment is by confinement in jail or by a fine exceeding \$500, in the three years preceding the date of the application; or

"(3) the vehicle storage facility for which the license is sought does not meet the standards for storage facilities established by the rules of the department.

"Section 8. NOTICE OF DENIAL. If the department denies an application for a license under this article, the department shall send written notice of its decision to the applicant, at the address shown on the application, by certified mail, return receipt requested. The notice shall state the reason for the department's decision and that the applicant is entitled to a hearing before the commission under Section 11 of this article. The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with the requirements of this article and rules of the commission before the 15th day after the date the applicant receives the notice, the commission shall then approve the application.

"Section 9. TERM OF LICENSE. (a) A license issued under this article expires on December 31 of the year in which it is issued.

"(b) A person may apply to the department to renew the license on an application form approved by the department. An application for renewal of a license must be accompanied by a fee of \$100.

"(c) If an application for renewal of a license is not submitted before the 31st day after the expiration date of the license, the license may not be renewed.

"(d) A person whose license expires and is not renewed under this section may apply for a new license under Section 6 of this article.

"Section 10. REVOCATION. (a) The department may revoke a license or deny an application to renew a license issued under this article if the department determines that:

"(1) the licensee, one of the licensee's partners, or one of the licensee's officers has been convicted of a felony, or a misdemeanor for which the maximum punishment is by confinement in jail or by a fine exceeding \$500, which directly relates to a duty or responsibility of an operator of a vehicle storage facility;

"(2) the vehicle storage facility for which the license was issued does not meet a standard for a vehicle storage facility set by rule of the department; or

"(3) the licensee knowingly violated a rule of the department, or an employee of the licensee, with the licensee's knowledge, violated a rule of the department.

"(b) The department shall send notice of the revocation or denial to the licensee by certified mail, return receipt requested, before the eighth day after the date of the decision.

"Section 11. HEARING. (a) A person whose application for a license to operate a storage facility has been denied, whose license has been revoked, or whose application to renew a license has been denied may, before the 15th day after the date the person receives notice of the revocation or denial, request in writing a hearing before the department on the revocation or denial.

"(b) The provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), relating to notice and hearings on contested cases, apply to notice and hearings on denial, revocation, and renewal of licenses under this article.

"(c) A hearing under this section is an exhaustion of administrative remedies, and an appeal from a hearing is to the district court having jurisdiction over the applicant or licensee.

"Section 12. VALIDITY OF LICENSE. (a) A license issued under this article is not valid for any person other than the person who applied for the license.

"(b) A license issued under this article applies only to a single vehicle storage facility named on the license.

"Section 13. LOCAL OPTION. (a) The governing body of a city by ordinance may provide that this article and rules adopted under this article do not apply inside the limits of the city.

"(b) On adopting an ordinance under this section, the governing body shall deliver a copy of the ordinance to the department.

"(c) An ordinance adopted under this section takes effect on the first day of the month following the month in which the ordinance is adopted.

"(d) If the governing body of a city repeals an ordinance adopted under this section, the governing body shall notify the department of its act as soon as practicable after the repeal.

"Section 14. ENFORCEMENT. A peace officer or license and weight inspector of the Department of Public Safety may make an arrest for a violation of a rule adopted under this article.

"Section 15. USE OF FEES. The department shall remit all fees collected under this article to the State Treasurer for deposit in the State Treasury to the credit of a fund to be used, subject to legislative appropriation, for administering this article.

“Section 16. EFFECT OF HEARING ON FEES. A hearing under Article 6701g-3, Revised Statutes, to determine whether there was probable cause for moving a vehicle to a vehicle storage facility does not affect the amount of fees due for removing and storing the vehicle.”

SECTION 2. Title 116, Revised Statutes, is amended by adding Article 6701g-3 to read as follows:

“Article 6701g-3. RIGHTS OF OWNER OF A STORED VEHICLE

“Section 1. DEFINITIONS. In this article:

“(1) ‘Vehicle storage facility’ has the meaning assigned to that term by Article 6687-9a, Revised Statutes.

“(2) ‘Vehicle’ has the meaning assigned to that term by Article 6687-9a, Revised Statutes.

“Section 2. RIGHT TO HEARING. If a vehicle has been moved and placed in a vehicle storage facility without the consent of the owner, the owner is entitled to a hearing to determine whether or not probable cause existed for the removal and placement of the vehicle. A hearing under this article shall be before a justice of the peace or magistrate in whose jurisdiction the vehicle storage facility is located.

“Section 3. REQUEST. (a) A person entitled to a hearing under this article must deliver a written request for the hearing to the court before the sixth day after the date the vehicle was placed in the vehicle storage facility. In computing time under this subsection, Saturdays, Sundays, and legal holidays are excluded. A person who fails to deliver the request within the specified time period waives the right to the hearing.

“(b) A written notice under this section must contain the following information:

“(1) the name, address, and telephone number of the owner of the vehicle;

“(2) the date and the location from which the vehicle was removed;

“(3) the name, address, and telephone number of the person or law enforcement agency who authorized the removal; and

“(4) the name, address, and telephone number of the vehicle storage facility where the vehicle was placed.

“Section 4. HEARING. (a) A hearing under this article shall be held before the fourth working day after the date the request for the hearing was received by the court.

“(b) The court shall notify the vehicle’s owner and the person or law enforcement agency who authorized the removal of the vehicle of the date, time, and place of the hearing.

“(c) The court may charge a filing fee of \$10 for a hearing under this article and may award court costs to the prevailing party.

“(d) The sole issue in a hearing under this article is whether or not probable cause existed for the removal and placement of the vehicle.

“(e) The court shall make written findings of fact and a conclusion of law regarding the issue in the hearing.

“Section 5. PAYMENT OF STORAGE COSTS. (a) If the court determines that probable cause existed for the removal and placement of the vehicle, the owner of the vehicle shall pay the costs of removing and storing the vehicle.

“(b) If the court does not determine that probable cause existed for the removal and placement of the vehicle, the person or law enforcement agency who authorized the removal shall pay the costs of removing and storing the vehicle. If the vehicle’s owner paid removal or storage costs before the hearing, the person or law enforcement agency shall fully reimburse the owner.”

SECTION 3. Not later than September 1, 1985, the Texas Department of Labor and Standards shall adopt rules required by Article 6687-9a, Revised Statutes, as added by this Act.

SECTION 4. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 1986, and applies to the placement of motor vehicles in storage facilities on or after that date.

(b) Section 5, Article 6687-9a, Revised Statutes, as added by this Act, takes effect April 1, 1986, and applies to the placement of motor vehicles in storage facilities on or after that date.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read.

Senator Sharp moved to concur in the House amendment.

The motion prevailed.

(President in Chair)

SENATE BILL 59 WITH HOUSE AMENDMENT

Senator Lyon called S.B. 59 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.
Floor Amendment No. 1 - Blackwood

Amend S.B. 59 as follows:

On page one (1), line 23, insert "a county paid public defender or" between the words "to" and "appointed".

The amendment was read.

Senator Lyon moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 387 WITH HOUSE AMENDMENT

Senator Howard called S.B. 387 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.
Committee Amendment No. 1 - Denton

Amend S.B. 387 as follows:

(1) Strike the second sentence of SECTION 1, Sec. 8(i) and in lieu thereof substitute the following sentence:

"In the event the retiree, surviving spouse, or dependent is entitled to receive medicare hospital insurance benefits at no charge, then the coverage provided by the plan or plans shall be secondary to medicare hospital and medical insurance."

(2) In SECTION 1, Sec. 9, strike the words "The trustee shall require each insurance carrier to issue annually to each retiree or surviving spouse insured under this article a certificate of insurance that:" and in lieu thereof substitute the following words:

"At such times, or upon such events, as designated by the trustee, each insurance carrier shall issue to each retiree or surviving spouse insured under this article a certificate of insurance that:"

(3) In SECTION 1, Sec. 13(b) after the word "to" and before the word "is," strike the words "that retiree or surviving spouse" and insert the following words in lieu thereof:

"the retiree, surviving spouse or dependent"

The amendment was read.

Senator Howard moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 716 WITH HOUSE AMENDMENT

Senator Parker called S.B. 716 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.
Committee Amendment No. 1 - O. Garcia

Substitute the following for S.B. 716:

A BILL TO BE ENTITLED AN ACT

relating to the creation of political subdivisions in municipal industrial districts and to the exclusion of industrial district land from political subdivisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Municipal Annexation Act (Article 970a, Vernon's Texas Civil Statutes) is amended by adding Section 5B to read as follows:

Sec. 5B. CREATION OF POLITICAL SUBDIVISION IN INDUSTRIAL DISTRICT. (a) Notwithstanding any contrary provisions in this Act, a political subdivision having as one of its purposes the providing or furnishing of services of a governmental or proprietary nature may not be created within the area of any industrial district designated by a city under Section 5 of this Act without the prior written consent of the city. The consent must be granted or denied by the city not later than the 60th day after the date the city receives a written request for the consent. If the city fails to grant or deny the request within the allotted period, the failure is equivalent to the city's having consented to the initiation of the creation proceedings.

(b) If consent to initiate the creation of such a political subdivision within an industrial district is granted, the proceedings seeking the creation of the political subdivision must be initiated and completed within the time periods specified in Subsection C, Section 8, of this Act. The failure to initiate and complete the proceedings within the allotted periods terminates the authorization.

SECTION 2. This Act takes effect September 1, 1985.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Parker moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 175 WITH HOUSE AMENDMENT

Senator Whitmire called S.B. 175 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.
Committee Amendment No. 1 - Danburg

Amend S.B. 175 as follows:

On page 1, insert the following on line 14 after "child":
, under circumstances under which no reasonable, similarly situated adult would leave a child of that age and ability.

The amendment was read.

Senator Whitmire moved to concur in the House amendment.

The motion prevailed.

FLOOR PRIVILEGES GRANTED

On motion of Senator Farabee and by unanimous consent, privileges of the floor were granted to Lisa Anderson of Senator Farabee's staff in order that she might sit at Senator Farabee's desk.

HOUSE BILL 2358 ON SECOND READING

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2358, Relating to the regulation of the treatment, storage, management and disposal of hazardous waste and solid waste.

The bill was read second time.

Senator Farabee offered the following committee amendment to the bill:
Committee Amendment No. 1

Amend H.B. 2358 as follows:

(1) On page 53, on line 11, between "the" and "hazardous" insert the following: "types and classes of".

(2) On page 53, on lines 13 and 14, strike the phrase "or other demonstration of financial responsibility".

(3) On page 53, on line 15, between "accidents" and "." insert the following: "or will otherwise demonstrate financial responsibility in a manner adopted by the department in lieu of public liability insurance".

(4) On page 54, on line 14, between "well" and "into" insert the following: "which proposes to inject".

(5) On page 54, on line 16, between "and" and "in" insert the following: "which is located".

(6) On page 54, on line 17, between "mining" and the first "and" insert "has been performed" and between "drilled" and "." insert "and have not been plugged".

The committee amendment was read and was adopted.

Senator Farabee offered the following committee amendment to the bill:
Committee Amendment No. 2

Amend H.B. 2358 by striking (A) of SECTION 4 (pages 18-19 of engrossed version; page 9, lines 23-68 of this printing) and substituting the following:

(A) The owner or operator of a hazardous waste or solid waste management facility shall not be required to obtain a permit for the storage, processing, treatment, disposal or destruction of solid waste or hazardous waste from any agency of the state other than the department or the department of water resources unless [except where] a permit is required under the new source review requirements of [pursuant to] Parts C or D of title I of the federal Clean Air Act, 42 USC 7401 et seq. for a major source or a major modification. Except with respect to major sources or major modifications described above, all [AH] participation in the review of a state permit application for the siting, construction and operation of a hazardous waste or solid waste management facility for the storage, processing, treatment, disposal or destruction of solid wastes or hazardous wastes shall be through one agency hearing which shall be the sole permit hearing for the permit application and which shall be conducted by either the department or the department of water resources, in accordance with the division of jurisdiction between the department and the department of water resources established in Section 3 of this Act. Where appropriate, other agencies which might otherwise have jurisdiction for permitting hazardous waste or solid waste facilities shall enter into memoranda of agreement with the department or the department of water resources or adopt rules which shall name either the department or the department of water resources, in accordance with the division of jurisdiction between the department and the department of water resources established in Section 3 of this Act, as the lead agency in all permit considerations and determinations concerning applications for the siting, construction and operation of hazardous waste or solid waste management facilities for the storage, processing, treatment, disposal or destruction of solid waste or hazardous waste. Such memoranda of agreement or rules shall include criteria which shall [to] be used by the lead agency in addressing the concerns of the other agencies which might otherwise have jurisdiction for permitting the facility. The Texas Air Control Board shall be solely responsible for performing the technical review of the air quality aspects of an application for a solid waste or hazardous waste management facility. The lead agency shall incorporate into the proposed agency action all proposed permit provisions or recommendations of the Texas Air Control Board in regard to the air quality aspects of the application. If no contested case hearing on the permit application is held by the lead agency then the proposed permit provisions of the Texas Air Control Board shall be incorporated into the final permit issued by the lead agency. The Texas Air Control Board shall complete its technical review and forward all proposed permit provisions or recommendations to the lead agency within the time limits established in the rules of the lead agency for the completion of its technical review of the application. If a contested case hearing is held on a permit application for a solid waste or hazardous waste management facility, all evidence and testimony of the state regarding the air quality aspects of the application which were reviewed by the Texas Air Control Board shall be developed and presented by representatives of the Texas Air Control Board subject to the right of the lead agency to cross-examine any testifying witnesses of the Texas Air Control Board. At the conclusion of the presentation of testimony, the hearings examiner shall afford the Texas Air Control Board a period of at least fifteen (15) days in which to submit a set of proposed findings of fact and conclusions of law and, if applicable, proposed permit language respecting the air quality aspects of the application, which shall be accepted by the hearings examiner and the permit issuing body of the lead agency in the absence of clear and convincing evidence to the contrary. The Texas Air Control Board shall have the authority to enforce the terms of any hazardous waste or solid waste permit issued by the lead agency which relate to its air quality criteria. Permit applications for hazardous waste or solid waste management facilities for which contested evidentiary hearings have commenced at the Texas Air Control Board prior to the

effective date of this provision, or appeals from decisions of the Texas Air Control Board on such applications, shall not be affected by this provision. An applicant may not withdraw a permit application to circumvent the intent of the preceding sentence. After the lead agency has completed its technical review of the permit application [and prior to the issuance of public notice relating to the opportunity for a hearing on the permit application], any [all other] agency [agencies] other than the Texas Air Control Board which might otherwise have jurisdiction for permitting the facility and which has requested an opportunity to review the proposed lead agency action on the permit application shall have a period of twenty (20) [forty-five (45)] calendar days from the end of the lead agency's technical review period to review the proposed agency action and determine whether its [their] concerns have been adequately addressed. In the event any such other agency determines its concerns have not been adequately addressed its sole remedy with respect to permitting shall be to present its concerns in the permit proceedings of the department or the department of water resources; and such other agency shall have the right to request a hearing or to intervene in such permit proceedings as a matter of law.

The amendment was read.

Senator Farabee offered the following substitute for Committee Amendment No. 2 to the bill:

Floor Amendment No. 1

Amend H.B. 2358 by striking SECTION 4 (4)(A) (starting on page 9, line 23) and substituting the following:

(A)(i) The owner or operator of a hazardous waste or solid waste management facility shall not be required to obtain a permit for the storage, processing, treatment, disposal or destruction of solid waste or hazardous waste from any agency of the state other than the department or the department of water resources unless a permit is required under the new source review requirements of Parts C or D of title I of the federal Clean Air Act, 42 U.S.C. 7401 et. seq. for a major source or a major modification, or unless a permit is required by the Railroad Commission of Texas under Chapter 27, Texas Water Code, with respect to major sources or major modifications described above, and except with respect to facilities required to be permitted by the Railroad Commission of Texas under Chapter 27, Texas Water Code, all participation in the review of a permit application shall be through one agency hearing, which shall be the sole permit hearing and which shall be conducted by either the department or the department of water resources as the lead agency, in accordance with the division of jurisdiction between them established in Section 3 of this Act. The Texas Air Control Board and other agencies which might otherwise have jurisdiction for permitting hazardous or solid waste facilities shall enter into joint rules or memoranda of agreement with the department or the department of water resources. Such joint rules or memoranda of agreement shall include such criteria as the Texas Air Control Board or other agency which might otherwise have jurisdiction may prescribe for use by the lead agency in addressing the concerns of the Texas Air Control Board or other agency in the permitting process. Such joint rules or memoranda shall at a minimum be consistent with applicable requirements of the United States Environmental Protection Agency for state program authorization under the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(ii) It is the intent of the Legislature that to the extent possible in conformance with this subpart (A), the lead agency shall defer to the policies, rules, and interpretations of hazardous waste or solid waste management activities, and that

the Texas Air Control Board remain the principal authority of the state in matters of air pollution control. The Texas Air Control Board shall be responsible for performing a technical review of the air quality aspects of an application for a solid waste or a hazardous waste management facility, which relate to the criteria established under (A)(i). It shall complete such review and shall forward all recommendations or proposed permit provisions to the lead agency within the time limits established in the rules of the lead agency for the completion of technical review of the application. The lead agency shall incorporate into its proposed action all recommendations or proposed permit provisions submitted by the Texas Air Control Board, unless such recommendation or proposed permit provisions are determined by the lead agency to be less stringent than applicable requirements of the United States Environmental Protection Agency for state program authorization under the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended. If the Texas Air Control Board's proposed permit provisions conflict with provisions proposed by the lead agency technical staff, the staffs of the two agencies shall attempt to resolve such conflict prior to the end of the technical review of the application. If no contested case hearing on the permit application is held by the lead agency, the recommendations or proposed permit provisions submitted by the Texas Air Control Board shall be incorporated into any permit issued by the lead agency. If a contested case hearing is held, all evidence and testimony of the state regarding air quality aspects of the application shall be developed and presented by the Texas Air Control Board. All parties, including the lead agency, shall have the right to cross-examine any testifying witnesses of the Texas Air Control Board. At the conclusion of the presentation of testimony, the hearings examiner shall afford the Texas Air Control Board at least thirty (30) days in which to submit a set of proposed findings of fact and conclusions of law and, if applicable, proposed permit language, respecting the air quality aspects the application which relate to the criteria established under (A)(i), which shall be accepted by the hearings examiner and the final decision making body of the lead agency unless such body finds that the recommendations of the Texas Air Control Board are not supported by a preponderance of the evidence. The Texas Air Control Board may seek judicial review of the air quality aspects of any final decision of the lead agency. Both the lead agency and the Texas Air Control Board shall have authority to enforce the terms of any permit issued by the lead agency which relate to air quality. Permit applications for hazardous waste or solid waste management facilities for which contested evidentiary hearings have commenced at the Texas Air Control Board prior to the effective date of this provision, or appeals from decisions of the Texas Air Control Board on such applications, shall not be affected by this subpart. An applicant may not withdraw a permit application to circumvent the intent of the preceding sentence. The Texas Air Control Board may delegate to its Executive Director any or all of the duties, responsibilities, or authority conferred by this subpart (A).

(iii) After the lead agency has completed its technical review of the permit application, any agency other than the Texas Air Control Board which might otherwise have jurisdiction for permitting the facility and which has requested an opportunity to review the proposed lead agency on the permit application shall have a period of twenty (20) calendar days from the end of the lead agency's technical review period to review the proposed action and determine whether its concerns have been adequately addressed. In the event such other agency determines its concerns have not been adequately addressed, its sole remedy with respect to permitting shall be to present its concerns in the permit proceedings of the lead agency; and such other agency shall have the right to request a hearing, to intervene as a matter of law, and to seek judicial review. In addition, such other agency shall

have the right to enforce the aspects of any lead agency permit which relate to its jurisdiction.

(iv) The provisions of this subpart (A) shall not apply to facilities which burn hazardous waste unless they are required to obtain a permit for such burning from the department or the department of water resources under rules adopted by such agency pursuant to a state hazardous waste regulatory program.

(v) Nothing herein shall be construed to abridge, modify or restrict the authority of the department or the department of water resources to promulgate rules under Section 4(c) of this Act, to issue permits and to enforce the terms and conditions of such permits, relating to all aspects of hazardous waste management, to the extent necessary for the department and the department of water resources to receive and maintain state program authorization under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

The amendment was read and was adopted.

Committee Amendment No. 2 as substituted was then adopted.

Senator Farabee offered the following committee amendment to the bill:
Committee Amendment No. 3

Amend **H.B. 2358** SECTION 1, Sec. 2 (1) by striking the word "apparently" in the definition of "Administratively complete".

The committee amendment was read and was adopted.

Senator Farabee offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 2358**, SECTION 3, (c)(13) (page 8, line 61 of the printed version) by inserting the following:

"adopted by the Federal Emergency Management Agency after the effective date of this Act:" between the words "map" and "as".

The amendment was read and was adopted.

Senator Farabee offered the following amendment to the bill:

Floor Amendment No. 3

Amend **H.B. 2358** by striking SECTION 16 (f) (page 23, line 27 of the printed version of the bill) and substituting the following:

"(f) In the issuance of a permit for a hazardous waste injection well into a salt dome, the department of water resources shall consider the location of any geologic fault in the salt dome in the immediate proximity of the injection well bore and the presence of sulfur mines or oil and gas wells in the area."

The amendment was read.

(Senator Traeger in Chair)

Senator Sarpalius offered the following amendment to Floor Amendment No. 3:

Floor Amendment No. 4

Amend **H.B. 2358** by striking SECTION 16 (f) (page 23, line 27 of the printed version of the bill) and substituting the following:

"(f) In the issuance of a permit for a hazardous waste injection well into a salt dome, the department of water resources shall consider the location of any geologic

fault in the salt dome in the immediate proximity of the injection well bore, the presence of an underground water aquifer, and the presence of sulfur mines or oil and gas wells in the area.”

The amendment to Floor Amendment No. 3 was read and was adopted.

Senator Caperton moved to table Floor Amendment No. 3 as amended.

The motion failed by the following vote: Yeas 8, Nays 22.

Yeas: Barrientos, Caperton, Edwards, Glasgow, Lyon, Parmer, Sharp, Traeger.

Nays: Blake, Brooks, Brown, Farabee, Harris, Henderson, Howard, Kothmann, Krier, Leedom, McFarland, Mauzy, Montford, Parker, Santiesteban, Sarpalius, Sims, Truan, Uribe, Washington, Whitmire, Williams.

Absent: Jones.

Floor Amendment No. 3 as amended was then adopted.

Senator Farabee offered the following amendment to the bill:

Floor Amendment No. 5

Amend SECTION 12 of **H.B. 2358** by deleting all of Sec. 13 (g)(7)(A) (page 21, lines 1-7 of the printed version) and substituting in lieu thereof the following:

“(A) The lien imposed by this paragraph shall arise and attach to the real property subject to or affected by a cleanup action at the time an affidavit is recorded and indexed in accordance with this paragraph in the county in which such real property is located. For the purpose of determining rights of all affected parties, the lien shall not relate back to a time prior to the date on which the affidavit is recorded, which date shall be the lien inception date. The lien shall continue until the liability for the costs is satisfied or becomes unenforceable through operation of law.”

and by deleting all of Sec. 13 (g)(7)(F) (page _____, lines _____ of the printed version) and substituting in lieu thereof the following:

“(F) the lien imposed by this paragraph shall not be valid or enforceable if:

(i) real property or an interest therein, or

(ii) a mortgage, lien, or other encumbrance upon or against real property, is acquired before the affidavit is recorded unless the person acquiring the real property or an interest therein or acquiring the mortgage, lien or other encumbrance thereon had or reasonably should have had actual notice or knowledge that the real property is subject to or affected by a clean-up action, or has knowledge that the state has incurred clean-up costs.

The amendment was read and was adopted.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 6

Amend **H.B. 2358** by striking Section 17 and substituting in lieu thereof the following:

SECTION 17. The amendments to the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) created by Section 3 of this Act and the amendments of the Texas Water Code set out in Section 16 of this Act shall not apply to any facility for which a notice of intent to file an application, or an application, has been filed with the Texas Department of Health or the Texas Department of Water Resources, or to a hazardous waste management facility

which has otherwise been authorized to operate by the rules of the Texas Department of Health or the Texas Department of Water Resources as of the effective date of this Act, with the exception that subsections (d)(1) and (e) of Section 16 shall apply to any application on which a hearing for the permit has not commenced prior to the effective date of this Act.

The amendment was read and was adopted.

Senator Farabee offered the following amendment to the bill:

Floor Amendment No. 7

Amend **H.B. 2358**, SECTION 12 (c) (2) by striking that subparagraph (page _____, lines _____ of the printed version) and substituting in lieu thereof the following:

“Recoverable costs under this section may include not only the costs incurred in eliminating the release or threatened release, but also such other costs as the court, in its discretion, may deem reasonable to award.”

The amendment was read and was adopted.

Senator Brooks offered the following amendment to the bill:

Floor Amendment No. 8

Amend **H.B. 2358** by adding the following as SECTION 17 and renumbering the present SECTIONS 17 and 18 as 18 and 19 respectively:

Section 17. Notwithstanding any other provision to the contrary in this act, nothing contained in this Act shall change, alter or enlarge upon the contractual liability of a person other than those listed in section 8 (g) (2) of this Act for the violation of, or a duty created by, any provision herein for acts or omissions which occurred prior to the effective date hereof.

The amendment was read and was adopted.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

RECORD OF VOTE

Senator Caperton asked to be recorded as voting “Nay” on the passage of the bill to third reading.

HOUSE BILL 2358 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 2358** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 2.

Yeas: Barrientos, Blake, Brooks, Brown, Edwards, Farabee, Glasgow, Harris, Henderson, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sims, Traeger, Truan, Uribe, Whitmire, Williams.

Nays: Caperton, Washington.

Absent: Howard, Jones, Sharp.

The bill was read third time and was passed.

RECORD OF VOTE

Senator Caperton asked to be recorded as voting "Nay" on the final passage of the bill.

(President in Chair)

COMMITTEE SUBSTITUTE HOUSE BILL 2359 ON SECOND READING

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2359, Relating to creation of the hazardous waste generation and facility fees fund and a hazardous waste disposal fee fund, to expenditures from the funds, and to imposition of fees on hazardous waste generation, hazardous waste facilities, and hazardous waste disposal.

The bill was read second time.

Senator Farabee offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2359** by inserting a new section between the existing Sections 4 and 5 to read as follows, renumbering subsequent sections.

Section 5. In the General Appropriations Act for the biennium beginning September 1, 1985, the Legislature may transfer funds to the general revenue fund from the Disposal Facility Response Fund established in Section 26.304, Water Code.

The amendment was read and was adopted.

Senator Parmer offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 2359** as follows: Amend subsection (c) of Section 12 of SECTION 2 as follows:

Striking the words "less than \$3.0 million nor more than \$3.25 million" and substituting the words "less than \$3.5 million nor more than \$3.75 million."

Amend subdivisions (2) and (3) of subsection (a) of SECTION 3 as follows:

In subdivision (2) striking the words "\$2.5 million" and substituting the words "\$2.9 million."

In subdivision (3) striking the words "\$400,000" and substituting "\$500,000."

The amendment was read and was adopted by the following vote: Yeas 18, Nays 12.

Yeas: Barrientos, Blake, Brooks, Caperton, Edwards, Krier, Lyon, Mauzy, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Truan, Uribe, Washington, Whitmire, Williams.

Nays: Brown, Farabee, Glasgow, Harris, Henderson, Howard, Kothmann, Leedom, McFarland, Montford, Sims, Traeger.

Absent: Jones.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 3

Amend C.S.H.B. 2359 on page 4, between lines 38 and 39, by inserting a new Section 4 to read as follows and by renumbering current Section 4 and subsequent sections appropriately:

SECTION 4. (a) Notwithstanding Section 26.304 (c), Water Code, of the balance in the disposal facility response fund on September 1, 1985, for the fiscal year beginning September 1, 1985, \$500,000 shall be transferred and for the fiscal year beginning September 1, 1986, \$1 million shall be transferred to a special fund in the state treasury. These amounts are hereby appropriated only for the hazardous waste alternative center at Lamar University at Beaumont.

(b) This section takes effect only if S.B. 223, Acts of the 69th Legislature, Regular Session, 1985, becomes law. If that bill does not become law, this section has no effect.

The amendment was read.

Senator Farabee moved to table the amendment.

The motion to table was lost by the following vote: Yeas 15, Nays 16.

Yeas: Brown, Caperton, Edwards, Farabee, Harris, Henderson, Howard, Jones, Krier, Leedom, McFarland, Montford, Parmer, Sharp, Traeger.

Nays: Barrientos, Blake, Brooks, Glasgow, Kothmann, Lyon, Mauzy, Parker, Santiesteban, Sarpalius, Sims, Truan, Uribe, Washington, Whitmire, Williams.

Floor Amendment No. 3 was then adopted.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 2359 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 2359 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

House Chamber
May 23, 1985

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to **H.B. 1823** by a record vote of 129 ayes, 0 noes and 6 present not voting.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

(Senator Caperton in Chair)

HOUSE BILL 25 ON SECOND READING

On motion of Senator Washington and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 25, Relating to the declaration of the birthday of the Reverend Martin Luther King, Jr., as a legal holiday.

The bill was read second time.

Senator Washington offered the following amendment to the bill:

Amend **H.B. 25** by striking Section 1 and substituting the following:

SECTION 1. Article 4591, Revised Statutes, is amended to read as follows:

Art. 4591. ENUMERATION. The first day of January, the third Monday in ~~[19th day of]~~ January, the third Monday in February, the second day of March, the 21st day of April, the last Monday in May, the 19th day of June, the fourth day of July, the 27th day of August, the first Monday in September, ~~[the second Monday in October,]~~ the 11th day of November, the fourth Thursday in November, and the 25th day of December, of each year~~[, and every day on which an election is held throughout the state,]~~ are declared legal holidays, on which all the public offices of the state may be closed and shall be considered and treated as Sunday for all purposes regarding the presenting for the payment or acceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange. The third Monday in ~~[nineteenth day of]~~ January shall be known as "Confederate Heroes Day" in honor of Jefferson Davis, Robert E. Lee and other Confederate heroes. The third Monday in January is also designated and shall be known as "Dr. Martin Luther King, Jr., Day" in observance of the birthday of Dr. Martin Luther King, Jr. The 19th day of June is designated "Emancipation Day in Texas" in honor of the emancipation of the slaves in Texas on June 19, 1865. On every day on which an election is held throughout the state, state officers and employees shall be given adequate time off to allow them to vote without deduction from accrued vacation, leave, or other compensatory time.

The amendment was read and was adopted.

RECORD OF VOTES

Senators Barrientos, Brooks, Edwards and Sharp asked to be recorded as voting "Nay" on the adoption of the amendment.

On motion of Senator Washington and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 25 ON THIRD READING

Senator Washington moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 25** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1, Present-not voting 1.

Nays: Jones.

Present-not voting: Washington.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Jones.

CONFERENCE COMMITTEE ON HOUSE BILL 2461

Senator Brown called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 2461** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on **H.B. 2461** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chairman; Sharp, Williams, Sims, Kothmann.

SENATE RULE 74a SUSPENDED

On motion of Senator Edwards and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendments to **S.B. 212**.

SENATE BILL 212 WITH HOUSE AMENDMENTS

Senator Edwards called **S.B. 212** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - T. Smith

Substitute the following for **S.B. 212**:

**A BILL TO BE ENTITLED
AN ACT**

relating to the governing board, operations, and continuation of the Texas Department on Aging.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 101.001(b), (c), (d), and (e), Human Resources Code, are amended to read as follows:

(b) The Texas Board on Aging is created as the governing body of the Texas Department on Aging. The board is composed of nine members appointed by the governor with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees. To be eligible for appointment to the board, a person

must have demonstrated an interest in and knowledge of the problems of aging and must be a member of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

- (1) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the department;
- (2) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the department; or
- (3) uses or receives a substantial amount of tangible goods, services, or funds from the department.

(c) Members of the board serve for staggered terms of six years with the terms of three members expiring on February 1 of each odd-numbered year [every two years]. A member may be re-appointed to the board.

(d) Members of the board may receive the compensatory per diem authorized by the General Appropriations Act for each day spent engaged in the performance of their official duties. Board members [serve without compensation, but] are entitled to reimbursement for actual travel expenses incurred in the performance of their duties.

(e) The board shall hold meetings quarterly and may hold other meetings called by the chairman. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

SECTION 2. The Human Resources Code is amended by amending Sections 101.002, 101.003, 101.005, 101.006, 101.008, and 101.021 and by adding Sections 101.0011, 101.0031, 101.0061, 101.0221, and 101.0251 to read as follows:

Sec. 101.0011. REMOVAL OF BOARD MEMBERS. (a) It is ground for removal from the board if a member:

- (1) does not have at the time of appointment the qualifications required by Section 101.001(b) of this code for appointment to the board;
- (2) does not maintain during the service on the board the qualifications required by Section 101.001(b) for appointment to the board;
- (3) violates a prohibition established by Section 101.0031 of this code;

(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

(c) If the executive director has knowledge that a potential ground for removal exists, he shall notify the chairman of the board of the ground. The chairman of the board shall then notify the governor that a potential ground for removal exists.

Sec. 101.002. APPLICATION OF SUNSET ACT. The department is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). ~~Unless[, and unless]~~ continued in existence as provided by that Act the department is abolished and this chapter expires effective September 1, 1997 [1985].

Sec. 101.003. CHAIRMAN OF THE BOARD. (a) ~~The [In addition to the nine members of the board, the]~~ governor shall designate [appoint] a chairman of the board from among the members~~[, who shall direct the work of the board].~~

(b) A member holds the position of chairman at the pleasure [The chairman serves during the tenure] of the [appointing] governor.

~~[(c) The chairman serves without compensation but is entitled to reimbursement for actual travel expenses incurred in performing the duties of the office:]~~

Sec. 101.0031. RESTRICTIONS ON BOARD MEMBERSHIP AND EMPLOYMENT. (a) An officer, employee, or paid consultant of an association that has as its primary interest the provision of services to, or other matters relating to, the aged may not be a member or employee of the board, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of such an association be a member of the board or an employee of the board grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(b) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities on behalf of a provider of services to the aged, may not serve as a member of the board or act as the general counsel to the board.

Sec. 101.005. CITIZENS ADVISORY COUNCIL. (a) The Citizens Advisory Council is composed of one member appointed by the [chairman of the board, with the consent of the] board[;] from each designated area agency on aging. Each council member must also be a member of the local advisory council advising the area agency. Council members [serve without compensation, but] are entitled to the compensatory per diem authorized by the General Appropriations Act for each day spent engaged [reimbursement for actual travel expenses incurred] in the performance of their duties as directed by the board and are entitled to the same travel allowance authorized by the General Appropriations Act for state employees.

(b) The council shall work under the board's direction. The council shall inform policymakers and administrators at the state level of local needs and concerns relating to the aged.

(c) The council shall meet at least quarterly and may hold other meetings called by the chairman of the board.

(d) [(c)] Council members serve for staggered terms of three years with the terms of one-third of the membership expiring on January 31 of each year.

Sec. 101.006. DIVISIONS OF THE DEPARTMENT[; -PERSONNEL].

(a) The executive director may establish divisions within the department that he considers necessary for effective administration and the discharge of the department's functions.

(b) The executive director may allocate and reallocate functions among the divisions.

Sec. 101.0061. PERSONNEL MATTERS. (a) [(c)] The executive director may employ personnel necessary for the administration of the department's duties.

(b) The executive director or the executive director's designee shall develop an intradepartmental career ladder program, one part of which shall require the intradepartmental posting of all nonentry level positions concurrently with any public posting.

(c) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this subsection.

(d) The board shall provide to its members and to the department employees as often as is necessary information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The board shall develop and implement policies that clearly separate the respective responsibilities of the board and the executive director.

(f) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made

without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the agency work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the agency work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address areas of significant underuse in the agency work force of all persons for whom federal or state guidelines encourage a more equitable balance. The policy statement shall be filed with the governor's office before November 1, 1985, cover an annual period, and be updated at least annually. The governor's office shall develop a biennial report to the legislature based on the information submitted. The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 101.008. FINANCES [BUDGET]. (a) The executive director shall prepare and submit to the board for approval a biennial budget and request for an appropriation by the legislature of funds necessary to carry out the duties of the department. The budget and request must include an estimate of all federal funds to be allocated to the state for the department's purposes.

(b) The board shall submit the budget and request to the Legislative Budget Board and the governor in the manner prescribed by law.

(c) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.

(d) The state auditor shall audit the financial transactions of the board at least once during each biennium.

Sec. 101.021. RULES. (a) The board shall adopt rules governing the functions of the department, including rules that prescribe the policies and procedures followed by the board and the department in the administration of any local services programs, employment programs for the aged, volunteer programs for the aged, or other programs.

(b) The board by rule or order may delegate its rights, powers, and duties to the executive director.

Sec. 101.0221. PUBLIC INTEREST INFORMATION; COMPLAINTS. (a) The board shall prepare information of public interest describing the functions of the board and describing the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

(b) The board shall adopt rules establishing methods by which consumers and service recipients can be notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for the notification through inclusion of the information:

(1) on each registration form, application, or written contract relating to participation in a program that is funded in any part by money derived from the department;

(2) on a sign which is prominently displayed in the place of business of each person or entity engaging in a program that is funded in any part by money derived from the department; or

(3) in a bill for service provided by a person or entity engaging in a program that is funded in any part by money derived from the department.

Sec. 101.0251. REVIEW OF ADMINISTRATIVE COSTS AND PROGRAMS. (a) The board by rule shall define "administrative costs" as used in this section. However, if a standard definition of administrative costs is required by law to be used by state agencies, the board shall use that definition.

(b) To determine the administrative costs incurred by an entity (including an area agency on aging and including an entity that spends money distributed by the department under Section 101.023 or 101.024 of this code) in engaging in a program that is funded in any part by money derived from the department, the department shall request appropriate information from the entity.

(c) The board shall establish the maximum amount of administrative costs that may be incurred by the entity in engaging in the program. In no event, however, may any entity use more than 12% of the money granted to it by the state for administrative costs. Administrative costs are the costs of accounting services, personnel office services, purchasing office services, and the executive salaries allocated to supervision of these services.

(d) The department periodically shall review the actions of entities receiving funds from the department and shall document its review. The review of an entity that spends money distributed under Section 101.024 of this code must include on-site evaluations of the entity and must include the review of documentation, which shall be required by the department, of the services performed by the aged in programs under Section 101.024.

SECTION 3. (a) A person serving a term as a member of the Texas Board on Aging immediately preceding September 1, 1985, is not required to have, during that term or during any period after the expiration of that term but before a successor is appointed and qualified, the public membership qualifications required by Section 101.001(b), Human Resources Code, as amended by this Act. The member is not subject to removal for the failure to have the qualifications.

(b) The term of office of a board member that would have expired in August 1987 under the law as it existed before the effective date of this Act, expires instead on February 1, 1987. The term of office of a board member that would have expired in August 1989 expires instead on February 1, 1989. The term of office of a board member that would have expired in August 1991 expires instead on February 1, 1991.

SECTION 4. This Act takes effect September 1, 1985.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Williamson

Amend C.S.S.B. 212, page 9, by deleting the language on lines 14 through 18 after the word "program."

The amendments were read.

Senator Edwards moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on S.B. 212 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Edwards, Chairman; Sarpalius, Sharp, Caperton, Parmer.

(Senator Brooks in Chair)

SENATE BILL 713 WITH HOUSE AMENDMENT

Senator Jones called S.B. 713 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.
Committee Amendment No. 1 - Denton

Amend S.B. 713 as follows:

(1) In Section 1, strike "that year;" from the proposed Section 25.403(a)(1) and substitute "for the fiscal years beginning on September 1, 1985 and September 1, 1986 and 8 percent of the total compensation of all members of the retirement system for each subsequent year;"

The amendment was read.

Senator Jones moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on S.B. 713 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Jones, Chairman; Traeger, Howard, Leedom, Sharp.

SENATE RULE 74a SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 74a was suspended as it relates to House amendments to S.J.R. 14.

SENATE JOINT RESOLUTION 14 WITH HOUSE AMENDMENTS

Senator Caperton called S.J.R. 14 from the President's table for consideration of the House amendments to the resolution.

The Presiding Officer laid the resolution and the House amendments before the Senate.

Committee Amendment No. 1 - Dutton

Amend S.J.R. 14 as follows:

- (1) On page 3, strike lines 3-5 and substitute the following:
"more reapportionment orders, the county or counties that comprise the specific".
- (2) On page 3, lines 9-11, strike the sentence that begins with "Nothing".
- (3) On page 3, line 12, strike "This" and substitute "Except as provided by Subsection (i) of this section, this".
- (4) On page 4, insert the following between lines 1 and 2:

(i) The legislature, the Judicial Districts Board, and the Legislative Redistricting Board may only redistrict the judicial districts so that each judicial district is composed of one or more entire counties.

Committee Amendment No. 2 - Dutton

Amend S.J.R. 14 on page 1, lines 15-17, by striking "the chairman of the Jurisprudence Committee of the Senate, the chairman of the Committee on the Judiciary of the House of Representatives,".

The amendments were read.

Senator Caperton moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the resolution.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the Conference Committee on S.J.R. 14 before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the resolution: Senators Caperton, Chairman; McFarland, Edwards, Farabee, Washington.

(President in Chair)

SENATE RULE 74a SUSPENDED

On motion of Senator Caperton and by unanimous consent, Senate Rule 74a was suspended as it relates to the House amendment to S.B. 290.

SENATE BILL 290 WITH HOUSE AMENDMENT

Senator Caperton called S.B. 290 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.
Committee Amendment No. 1 - Dutton

Amend S.B. 290 as follows:

- (1) On page 1, strike lines 19 and 20 and substitute "counties to be included".
- (2) On page 2, strike lines 10 and 11 and substitute "counties that comprise".
- (3) On page 3, strike lines 15 and 16 and substitute "must contain one or more complete counties. More than one judicial district may contain the same".
- (4) On page 4, strike lines 8-10 and substitute:
- (e) Nothing in this Act authorizes the board to establish single-member judicial districts in a county.
- (5) On page 6, strike lines 13-15 and substitute "affected by the order contain only the counties designated for the judicial districts in the".

The amendment was read.

Senator Caperton moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 290 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Caperton, Chairman; Farabee, Edwards, McFarland, Washington.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolutions:

H.J.R. 27	H.B. 753	H.B. 1433
H.B. 36	H.B. 809	H.B. 1463
H.B. 76	H.B. 865	H.B. 1533
H.B. 95	H.B. 892	H.B. 1628
H.B. 118	H.B. 900	H.B. 1681
H.B. 128	H.B. 918	H.B. 1728
H.B. 160	H.B. 1029	H.B. 1819
H.B. 167	H.B. 1070	H.B. 1941
H.B. 192	H.B. 1096	H.B. 1942
H.B. 282	H.B. 1112	H.B. 1965
H.B. 335	H.B. 1119	H.B. 1966
H.B. 460	H.B. 1132	H.B. 2044
H.B. 475	H.B. 1149	H.B. 2139
H.B. 476	H.B. 1161	H.B. 2182
H.B. 479	H.B. 1215	H.B. 2229
H.B. 528	H.B. 1216	H.B. 2236
H.B. 593	H.B. 1226	H.B. 2301
H.B. 653	H.B. 1235	H.B. 2323
H.B. 685	H.B. 1241	H.B. 2376
H.B. 733	H.B. 1259	H.B. 2382
H.B. 745	H.B. 1263	H.B. 2405
H.B. 746	H.B. 1264	H.B. 2427
H.B. 747	H.B. 1345	H.B. 2443
H.B. 748	H.B. 1389	H.B. 749

SENATE RULE 103 SUSPENDED

On motion of Senator Jones and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Finance might consider S.C.R. 181 today.

SENATE RULE 103 SUSPENDED

On motion of Senator Blake and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Administration might consider S.R. 485 today.

SENATE RULE 103 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Administration might consider S.C.R. 180 today.

SENATE RULE 103 SUSPENDED

On motion of Senator Farabee and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on State Affairs might consider H.B. 1655 today.

SENATE RULE 103 SUSPENDED

On motion of Senator Harris and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Economic Development might consider the following bills Friday, May 24, 1985:

H.B. 2272

H.B. 1739

H.B. 1553

H.B. 1908

HOUSE JOINT RESOLUTION 83 REREFERRED

On motion of Senator Caperton and by unanimous consent, H.J.R. 83 was withdrawn from the Committee on Criminal Justice and rereferred to the Committee on Jurisprudence.

SENATE RULE 103 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Administration might consider S.C.R. 182 today.

**CONFERENCE COMMITTEE REPORT
HOUSE BILL 433**

Senator Mauzy submitted the following Conference Committee Report:

Austin, Texas

May 23, 1985

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 433 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MAUZY
BARRIENTOS
EDWARDS
WILLIAMS
URIBE

On the part of the Senate

DELCO
D. HUDSON
ARMBRISTER
PRICE
SAUNDERS

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**NOTICE OF SESSION TO HOLD
LOCAL AND UNCONTESTED BILLS CALENDAR**

Senator Blake announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held upon conclusion of the session on Friday, May 24,

1985, and that all bills and resolutions would be considered on second and/or third reading in the order in which they are listed.

MEMORIAL RESOLUTIONS

H.C.R. 216 - (Williams): Memorial resolution for Texas Ranger Charles B. Cook.

S.R. 513 - By Glasgow: Memorial resolution for Charlie Moss.

S.R. 514 - By Glasgow: Memorial resolution for Mrs. Velma F. Freeman.

S.R. 515 - By Glasgow: Memorial resolution for James Malcolm Scott, Sr.

S.R. 516 - By Glasgow: Memorial resolution for Curby Mirike.

WELCOME AND CONGRATULATORY RESOLUTIONS

H.C.R. 217 - (Traeger): Extending congratulations to Jerry and Yvonne Edwards on birth of Jerry Blake Edwards.

H.C.R. 220 - (Whitmire): Extending congratulations to Eagle Scouts of Troop 1276.

H.C.R. 221 - (Traeger): Extending congratulations to Charles English, Vice-Chancellor, University System of South Texas.

H.C.R. 223 - (Harris): Extending congratulations to L.V.R. Berkner Academic Decathlon Team.

S.R. 503 - By Harris: Expressing appreciation to John A. and Katie Jackson of Dallas for donation of parkland to City of Dallas.

S.R. 504 - By Harris: Extending welcome to M. Henri and Mme. Jeanette Levaufre of France.

S.R. 506 - By Montford: Extending congratulations to Don G. Furr.

S.R. 507 - By Whitmire: Extending congratulations to John D. Bowser.

S.R. 508 - By Whitmire: Extending congratulations to Theodore Mark Means.

S.R. 509 - By Leedom: Extending congratulations to Michael P. Palmer.

S.R. 510 - By Sharp: Extending congratulations to Lady Cats, Refugio High School, winners of Class 3A title in UIL Track and Field Championships.

S.R. 511 - By Barrientos: Honoring John Allen McCarty for courage and exemplary patriotic spirit.

S.R. 512 - By Blake: Extending congratulations to Mrs. H. M. (Amanda) Amsler, Mrs. Lel Purcell Hawkins and Daughters of Republic of Texas.

S.R. 517 - By Lyon: Commending the service of Mrs. Lola Liles Cathey.

ADJOURNMENT

On motion of Senator Mauzy, the Senate at 3:30 o'clock p.m. adjourned until 10:30 o'clock a.m. tomorrow.

APPENDIX

Signed by Governor
(May 22, 1985)

S.B. 446 (Effective immediately)

S.B. 644 (Effective immediately)
 S.B. 649 (Effective immediately)
 H.B. 248 (Effective August 26, 1985)
 H.C.R. 125

(May 23, 1985)

H.B. 2 (Effective upon adoption of
 Constitutional amendments
 proposed by H.J.R. 6)

Sent to Governor
 (May 23, 1985)

S.C.R. 94	S.B. 623	S.B. 1105
S.B. 67	S.B. 625	S.B. 1126
S.B. 79	S.B. 670	S.B. 1173
S.B. 253	S.B. 748	S.B. 1185
S.B. 401	S.B. 754	S.B. 1193
S.B. 402	S.B. 767	S.B. 1232
S.B. 426	S.B. 792	S.B. 1242
S.B. 449	S.B. 797	S.B. 1253
S.B. 483	S.B. 803	S.B. 1254
S.B. 551	S.B. 813	S.B. 1264
S.B. 552	S.B. 851	S.B. 1289
S.B. 553	S.B. 853	S.B. 1292
S.B. 564	S.B. 862	S.B. 1329
S.B. 596	S.B. 885	S.B. 1331
S.B. 602	S.B. 909	S.B. 1341
S.B. 612	S.B. 910	S.B. 1349
S.B. 615	S.B. 1093	S.B. 1376

Sent to Secretary of State
 (May 23, 1985)

H.J.R. 27

SEVENTY-SEVENTH DAY

(Friday, May 24, 1985)

The Senate met at 10:30 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Barrientos, Blake, Brooks, Brown, Caperton, Edwards, Farabee, Glasgow, Harris, Henderson, Howard, Jones, Kothmann, Krier, Leedom, Lyon, McFarland, Mauzy, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Washington, Whitmire, Williams.

A quorum was announced present.

Senator Roy Blake offered the invocation as follows:

Our Heavenly Father, help us to realize in the Senate and in the House and in the lobby that we will all survive Tuesday morning whether or not some of this legislation passes and becomes law. Be with us these last few days. We ask these things in Thy name. Amen.